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AUG 03 2009

OFFICE OF PETITIONS

In re Application of	:	
Daniel W. Chan et al.	:	
Application No. 10/500,838	:	DECISION ON PETITION
Filed: February 2, 2005	:	
Attorney Docket No. 56792(71699)	:	

This is a decision on the petition, filed May 28, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." See 37 CFR 1.181(f).

This application was held abandoned for failure to reply to the final Office action of April 30, 2008, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on April 30, 2009.

Petitioner contends that the Notice of Abandonment was mailed in error since a timely reply (Notice of Appeal) was received by the office on October 29, 2008, with a three (3) month extension of time. A review of the application file record confirms that a Notice of Appeal along with the fees for a three (3) month extension of time were filed in a timely manner.

However, this application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed October 29, 2008, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on December 30, 2008. *See* MPEP 1215.04.

Petitioner should note that the instant application remains abandoned as an appeal brief (and appeal brief fee) has not been filed to date. Therefore, the requested relief of withdrawing the holding of abandonment cannot be granted, although the Notice of Abandonment was mailed prematurely.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
- (2) The petition fee as set forth in 37 CFR 1.17(m), **\$810 for a small entity**;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the \$810 petition fee.

Further correspondence with respect to this matter should be addressed as follows:

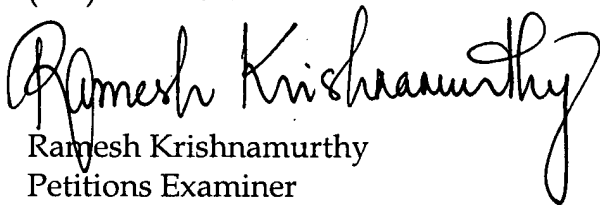
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Telephone inquiries related to this decision may be directed to the JoAnne Burke at (571) 272-4584.

A handwritten signature in black ink, reading "Ramesh Krishnamurthy". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned
Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement